No. 15-7

IN THE

Supreme Court of the United States

UNITED HEALTH SERVICES, INC.,

Petitioner,

v.

UNITED STATES AND COMMONWEALTH OF MASSACHUSETTS EX REL. JULIO ESCOBAR AND CARMEN CORREA,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF OF *AMICUS CURIAE* CATHOLIC CHARITIES OF THE DIOCESE OF JOLIET, INC. IN SUPPORT OF PETITIONER

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INTERESTS OF THE *AMICUS CURIAE*[1]

Catholic Charities of the Diocese of Joliet, Inc. ("Catholic Charities") is a non-profit, faith-based organization that has provided services to people in need just outside of Chicago, Illinois since 1949. These services include assistance to some of the most vulnerable in society, including the elderly, disabled, homeless, and young. As part of its mission, Catholic Charities frequently contracts with government entities, including the State of Illinois, to provide critical social services.

Catholic Charities submits this brief as *amicus curiae* because Illinois courts, like courts throughout the country, rely on federal court interpretations of the federal False Claims Act ("federal FCA") to interpret similar state-law statutes. Unfortunately, Catholic Charities is currently facing suit under the Illinois False Claims Act, 740 Ill. Comp. Stat. Ann. § 175/1, *et seq.*, by a disgruntled foster parent alleging that every foster service provided by Catholic Charities over a six-year period was fraudulent under an implied false certification theory. *See* Compl. ¶¶149–54, *Illinois ex rel. Ballard v. Catholic Charities of the Diocese of Joliet, Inc.*, 2012 L 753 (Ill. Cir. Ct.) (DuPage Cnty.). The suit demands treble damages on the $175 million allegedly paid over those six years to three

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[1] All parties have consented to the filing of this brief. As required by Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than *amicus*, their members, and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

defendants ($18 million to Catholic Charities), even though Catholic Charities has a total current annual budget for all of its services of just over $21 million. This Court's determination of the validity vel non of implied false certification under the federal FCA will have a substantial impact not only on Catholic Charities but on similarly-situated entities facing state-law claims around the country.

SUMMARY OF ARGUMENT

I. While this case addresses the proper definition and method of proof for falsity under the federal FCA, 31 U.S.C. § 3729, *et seq.*, as a practical matter the Court's resolution of that question will reach much more broadly. Forty-two states, as well as Washington, D.C. and at least half a dozen major municipalities (*e.g.*, New York, Chicago), have enacted some form of false claims act ("state FCAs"). Many of these state FCAs closely hew to the federal FCA's falsity requirement, reflecting both a common anti-fraud heritage and congressional encouragement to states through financial incentives to enact laws that complement the federal FCA. And while provisions of other state FCAs may vary, sometimes significantly, falsity is an essential element under all of them. Thus it is not surprising that federal and state courts alike apply federal case law to interpret the state acts. As a practical matter then, this Court is interpreting not just the federal FCA, but up to forty-two other state and at least a half-dozen municipal equivalents.

II. The experiences of Catholic Charities illustrate the problems with allowing an implied false certification theory. After enduring a dispute with a foster parent over its handling of two foster

children, Catholic Charities was sued for submitting false claims to the State of Illinois based on generic contractual language that it would comply with "all local, state and federal laws, regulations, and standards." From that language, the foster parent combed the Illinois code for several highly discretionary state statutes, hypothesized that Catholic Charities had violated these statutes based on her own experiences, and asserted that the alleged violations tainted all claims submitted for services provided to all foster children. The foster parent claimed that these allegations rendered some six years of foster child claims submitted to the State of Illinois by Catholic Charities and two co-defendants false, allegedly rendering some $175 million in payments ($18 million to Catholic Charities) false or fraudulent and warranting treble damages—even though there was no dispute that Catholic Charities fully performed the services for which it requested payment. Nevertheless, under an implied false certification theory, the foster parent survived a motion to dismiss, and the case remains in litigation.

ARGUMENT

I. THE COURT'S FCA "FALSITY" DEFINITION WILL IMPACT ANALOGOUS LAWS IN ALMOST EVERY STATE.

The Court's ruling in this case will have broad-reaching implications well beyond the federal FCA. As a practical matter, it will provide the definition and permissible theory of falsity for some forty-two state false claims acts ("state FCAs") as well as corresponding ordinances enacted by several large municipalities. Many of the state FCAs track the

federal FCA word for word, and even those that are not verbatim copies incorporate similar statutory falsity concepts. Reflecting this common language, courts interpreting state FCAs typically look to and follow decisions interpreting the federal FCA. As a result, this case is almost certain to sweep more broadly than the already-important federal statute before this Court.

A. Forty-two states, the District of Columbia, and several large municipalities presently have some form of state FCA.

The federal FCA penalizes, in relevant part, "a false or fraudulent claim for payment or approval," or "a false record or statement material to a false or fraudulent claim." § 3729(a)(1)(A)-(B). While the precise language imposing liability can vary, at present forty-two states as well as the District of Columbia have some form of state FCA.[2] In addition

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[2] *See* Ala. Code § 22-1-11; Ark. Code Ann. §§ 20-77-901–911; Cal. Gov't Code §§ 12650–56; Colo. Rev. Stat. §§ 25.5-4-303.5–310; Conn. Gen. Stat. §§ 4-274–89; D.C. Code §§ 2-381.01–.10; Del. Code Ann. tit. 6 §§ 1201–11; Fla. Stat. Ann. §§ 68.081–.105; Ga. Code Ann. §§ 23-3-120–27; Haw. Rev. Stat. §§ 661-21–31; Iowa Code §§ 685.1–.7; 740 Ill. Comp. Stat. Ann. §§ 175/1–175/8; Ind. Code §§ 5-11-5.5-1–18; Kan. Stat. Ann. §§ 75-7501–11; Ky. Rev. Stat. §§ 205.8451–83; La. Rev. Stat. Ann. §§ 46:437.1–439.4; Mass. Gen. Laws Ann. ch. 12 §§ 5A–5O; Md. Code Ann. Health-Gen. §§ 2-601–11; Me. Rev. Stat. tit. 22 § 15; Mich. Comp. Laws §§ 400.601–15; Minn. Stat. §§ 15C.01–.16; Mo. Rev. Stat. §§ 191.900–14; Miss. Code Ann. §§ 43-13-201–33; Mont. Code Ann. §§ 17-8-401–16; N.C. Gen Stat. §§ 1-605–18; Neb. Rev. Stat. §§ 68-934–47; Nev. Rev. Stat. §§ 357.010–250; N.H. Rev. Stat. Ann. §§ 167:58–.62; N.J. Stat. Ann. §§ 2A:32C-1–18; N.M. Stat. Ann. §§ 27-14-1–15; N.Y. State Fin. Law §§ 187–94; Okla. Stat. Ann. tit. 63 §§ 5053–.7; Or. Rev. Stat. §§ 180.750–85; 62 Penn. Cons. Stat. Ann.

to these forty-two states, at least half a dozen large municipalities, including New York City, Chicago, Philadelphia, and San Francisco have enacted similar provisions. *See* Allegheny Cnty. Ordinance § 485-1 *et seq.* (county incorporating the City of Pittsburgh); Chicago, Ill. Mun. Code § 1-21-010 *et seq.*; Miami-Dade Cnty. Ordinance § 21-255 *et seq.* (county incorporating the City of Miami); N.Y.C. Admin. Code § 7-801 *et seq.*; Philadelphia Code § 9-3601 *et seq.*; San Francisco Admin. Code § 6.80 *et seq.*

The operative liability provisions of many of the state FCAs fall into three general categories. First, many state FCAs are nearly verbatim transcriptions of the federal FCA's operative liability language in § 3729(a)(1), even down to adopting the same organizational structure and sub-provisions. *Compare, e.g.*, 740 Ill. Comp. Stat. Ann. 175/3(a)(1) *with* 31 U.S.C. § 3729(a)(1) (Illinois FCA liability provision identical to federal FCA, except for minor alterations like substituting "state" for "Government" or "United States Government"); *see also, e.g.*, Del. Code Ann. tit. 6 § 1201 (incorporating federal FCA verbatim except for omitting "member of the Armed Forces" found in § 3729(a)(1)(F)). Second, other states shift the location of sub-provisions within the statute but otherwise also closely follow the federal

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(continued...)

§§ 1401–18; R.I. Gen. Laws §§ 9-1.1-1–9; Tenn. Code Ann. §§ 4-18-101–08; Tex. Hum. Res. Code §§ 36.001–.132; Utah Code Ann. §§ 26-20-1–15; Va. Code Ann. §§ 8.01-216.1–.19; Vt. Stat. Ann. tit. 32 §§ 630–42; Wash. Rev. Code Ann. §§ 74.66.005–.130; W. Va. Code §§ 9-7-1–9; Wyo. Stat. Ann. §§ 42-4-301–06.

FCA. *See, e.g.*, Cal. Gov't Code § 12651(a) (shifting damages and civil penalties provision from the end to the beginning of the subsection and imposing liability for failure to report a false claim); N.C. Gen. Stat. § 1-607(a) (shifting damages and civil penalties provision from the end to the beginning of the subsection). And third, still other state FCAs add additional words or phrases potentially relevant to other elements of FCA liability but nevertheless continue to penalize false claims. *See, e.g.*, Ind. Code § 5-11-5.5-2(b) (adding "intentionally" submitting false claims in addition to the federal FCA's "knowingly" prohibition). Regardless of the precise contours of the statutes, however, each shares a common denominator: Like the federal FCA, they all penalize attempts to fraudulently obtain government monies.

This convergence in statutory language is unsurprising because Congress has expressly incentivized states to adopt their own parallel versions of the federal FCA. Under the Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 6031, 120 Stat. 4, 72–73 (2005), *codified at* 42 U.S.C. § 1396h, the federal government will allow states to retain an additional ten percent of any Medicaid monies recovered through state FCA lawsuits as long as a state has a statute that contains, among other things, "provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims" as the federal FCA and "contains a civil penalty that is not less than the amount" authorized by the federal FCA. *Id.*; *see also* U.S. Dept. of Health & Human Servs., Office of Inspector General, UPDATED OIG Guidelines for Evaluating State False Claims Acts 3 (Mar. 15,

2013), *available at* http://www.oig.hhs.gov/fraud/docs/falseclaimsact/guidelines-sfca.pdf (providing example showing that if a state normally would be required to reimburse the federal government sixty percent of any recovery in a state fraud suit, the percentage is reduced to fifty percent if the state has enacted a state FCA that complies with 42 U.S.C. § 1396h). Predictably, the states responded to this financial incentive. Thirteen states enacted their state FCAs after Congress passed the Deficit Reduction Act,[3] and many states that had FCAs prior to 2005 amended their acts to qualify for the federal subsidy.[4] The financial incentive was strong enough that in response to amendments to the federal FCA contained in the Fraud Enforcement and Recovery Act, Pub. L. No. 111-21, 123 Stat. 1617 (2009), Patient Protection and Affordable Care Act,

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[3] *See* Colo. Rev. Stat. §§ 25.5-4-303.5–310 (2010); Conn. Gen. Stat. §§ 4-274–89 (2009) Ga. Code Ann. §§ 23-3-120–27 (2007); Iowa Code §§ 685.1–.7 (2010); Md. Code Ann. Health-Gen. §§ 2-601–11 (2010); Minn. Stat. §§ 15C.01–.16 (2009); N.C. Gen Stat. §§ 1-605–18 (2009), N.J. Stat. Ann. §§ 2A:32C-1–18 (2008); N.Y. State Fin. Law §§ 187–94 (2007); Okla. Stat. Ann. tit. 63 §§ 5053–.7 (2007); R.I. Gen. Laws §§ 9-1.1-1–9 (2007); Vt. Stat. Ann. tit. 32 §§ 630–42 (2015); Wash. Rev. Code Ann. §§ 74.66.005–.130 (2012).

[4] *See, e.g.*, S.B. 2312, 109th Reg. Sess. (Fla. 2007) (amending Florida's FCA); S.B. 529, 74th Reg. Sess. (Nev. 2007) (amending Nevada's FCA "to comply with the provisions of section 6031 of the Federal Deficit Reduction Act"); S.B. 362, 80th Leg., Reg. Sess. (Tex. 2007) & Tex. Leg. Council, Summary of Enactments 80th Leg. Reg. Sess., at 187 (Oct. 2007) ("Senate Bill 362 amends the Human Resources Code to bring Texas law into compliance with federal law for purposes of qualifying for [the DRA's] incentives").

Pub. L. No. 111-148, 124 Stat. 119 (2010), and Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), some states further amended their own FCAs to maintain the federal subsidy.[5]

Of course, not all state FCA statutes track the federal FCA in substantial part, much less qualify for the congressional Medicaid incentive codified in 42 U.S.C. § 1396h. For instance, while many state statutes track the federal FCA by providing *qui tam* provisions to allow individuals to sue on the state's behalf,[6] others leave enforcement to state officials. *See, e.g.*, Kan. Stat. Ann. § 75-7504(a)-(b) (providing state attorney general enforcement of state FCA and

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[5] *See, e.g.*, Act of June 13, 2011, §§ 153–159, Pub. Act No. 11-44, 2011 Conn. Acts 44 (Conn. 2011) & Act of June 21, 2011, § 119, Pub. Act No. 11-61, 2011 Conn. Acts 61 (Conn. 2011) (amending Connecticut's FCA to meet federal standards); S.B. 13-205, 69th Gen. Assem., 1st Reg. Sess. (Colo. 2013) (amending Colorado's FCA to "bring the act into compliance with federal law"); S.B. 1262, 2011 Sess. (Va. 2011) (incorporating federal amendments into the Virginia FCA).

[6] *See* Cal. Gov't Code § 12652; Conn. Gen. Stat. § 4-277; D.C. Code § 2-381.003; Del. Code Ann. tit. 6 § 1204; Fla. Stat. Ann. § 68.083; Ga. Code Ann. § 23-3-122; Haw. Rev. Stat. § 661-25; Iowa Code Ann. § 685.3; 740 Ill. Comp. Stat. Ann. § 175/4; Ind. Code § 5-11-5.5-4; La. Rev. Stat. Ann. §§ 46:439.1–.4; Mass. Gen. Laws Ann. ch. 12 § 5D; Md. Code Ann. Health-Gen. § 2-604; Mich. Comp. Laws § 400.610a; Minn. Stat. § 15C.08; Mont. Code Ann. § 17-8-406; N.C. Gen Stat. § 1-608; Nev. Rev. Stat. § 357.080; N.H. Rev. Stat. Ann. § 167:61-c; N.J. Stat. Ann. § 2A:32C-5; N.M. Stat. Ann. § 27-14-7; N.Y. State Fin. Law § 190; Okla. Stat. Ann. tit. 63 § 5053.3; R.I. Gen. Laws § 9-1.1-4; Tenn. Code Ann. § 4-18-104; Tex. Hum. Res. Code § 36.101; Va. Code Ann. § 8.01-216.5; Vt. Stat. Ann. tit. 32 § 633; Wash. Rev. Code Ann. § 74.66.050.

noting that "nothing in this act shall be construed to create a private cause of action"). Similarly, some state FCAs apply exclusively to false or fraudulent claims made to the state's Medicaid program. *See, e.g.*, Colo. Rev. Stat. § 25.5-4-305; Conn. Gen. Stat. § 4-275. And some state statutes even make the submission of a false or fraudulent claim a felony punishable by hefty fines and several years' imprisonment rather than imposing civil fines and damages. *See, e.g.*, Mich. Comp. Laws § 400.607. Nevertheless, regardless of distinctions such as who may bring suit, whether the statutes apply to fraud generally or only within specific statutory programs, or even what penalties may be imposed for violations, even these statutes share the critical issue that is at the center of this case. Each requires that a claim or record must be "false" or "fraudulent" to be actionable. These statutes therefore are also likely to be affected by this Court's decision.

B. Courts interpreting these state FCA laws follow federal FCA precedents.

Reflecting the similar state FCA language encouraged by Congress, courts interpreting these laws have repeatedly held that they are modeled after, mirror, or substantially track the federal FCA. *See, e.g.*, *United States ex rel. Absher v. Momence Meadows Nursing Ctr., Inc.*, 764 F.3d 699, 704 n.5 (7th Cir. 2014) (Illinois false claims act "closely mirrors the [federal] FCA"); *United States ex rel. Thayer v. Planned Parenthood of the Heartland*, 765 F.3d 914, 916 n.1 (8th Cir. 2014) ("Because the FCA and the [Iowa] FCA are nearly identical, case law interpreting the FCA also applies to the [Iowa] FCA."); *State v. Altus Finance, S.A.*, 116 P.3d 1175,

1184 (Cal. 2005) ("[T]he CFCA 'is patterned on similar federal legislation' and it is appropriate to look to precedent construing the equivalent federal act." (internal citation omitted)). As a result of this common language (as well the relative paucity of judicial interpretation due to the recent enactment of many state FCAs), federal and state courts have applied federal case law to interpret at least twenty-nine of the state FCAs.[7]

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[7] *See, e.g.*, *Altus Finance*, 116 P.3d at 1184 (California); *Furlong v. Gardner*, 956 P.2d 545 (Colo. 1998) (en banc) (Colorado); *Payne v. District of Columbia*, 773 F. Supp. 2d 89, 97 n.4 (D.D.C. 2011) (District of Columbia); *United States ex rel Bogart v. King Pharm.*, 414 F Supp. 2d 540, 543 & n.1 (E.D. Pa. 2006) (Delaware and Louisiana); *United States ex rel. Heater v. Holy Cross Hosp., Inc.*, 510 F. Supp. 2d 1027, 1033 n.5 (S.D. Fla. 2007) (Florida); *Cade v. Progressive Cmty. Healthcare, Inc.*, No. 1:09-cv-3522-WSD, 2011 WL 2837648, at *3 (N.D. Ga. July 14, 2011) (Georgia); *United States ex rel. Woodruff v. Haw. Pac. Health*, 560 F. Supp. 2d 988, 997 n.7 (D. Haw. 2008) (Hawaii); *Thayer*, 765 F.3d at 916 n.1 (Iowa); *United States ex rel. Humphrey v. Franklin-Williamson Human Servs., Inc.*, 189 F. Supp. 2d 862, 867 (S.D. Ill. 2002) (Illinois); *Thomas v. EmCare, Inc.*, No. 4:14-cv-00130-SEB, 2015 WL 5022284, at *2 n.2 (S.D. Ind. Aug. 24, 2015) (Indiana); *Klaassen v. Univ. of Kan. Sch. of Med.*, 84 F Supp. 3d 1228, 1262 (D. Kan. 2015) (Kansas); *Scannell v. Att'y Gen.*, 872 N.E.2d 1136, 1138 n.4 (Mass. App. Ct. 2007) (Massachusetts); *United States v. Bon Secours Cottage Health Servs.*, 665 F. Supp. 2d 782, 783 n.2 (E.D. Mich. 2008) (Michigan); *Olson v. Fairview Health Servs. of Minn.*, No. 13-2607, 2015 WL 1189823, at *7 (D. Minn. Mar. 16, 2015) *appeal docketed* No. 15-1780 (8th Cir.) (Minnesota); *In re Miss. Medicaid Pharm. Average Wholesale Price Litig.*, ___ So.3d ___, No. 2012-CA-01610-SCT, 2015 WL 6533344, at *13 (Miss. Oct. 29, 2015) (Mississippi); *United States ex rel. Bartz v. Ortho-McNeil Pharm., Inc.*, 856 F. Supp. 2d 253, 258 n.7 (D. Mass. 2012) (New Hampshire and New Jersey); *New York v. Amgen*, 652 F.3d 103, 109 (1st Cir. 2011) (New Mexico); *Simonian v.*

And with regard to other state FCAs that courts may not yet have had occasion to interpret, the similar language many of those statutes contain makes it reasonable to believe that courts will eventually come to the same logical decision. *See, e.g.*, Conn. Gen. Stat. § 4-274; Md. Code Ann. Health Gen. § 2-601; Mont. Code Ann. § 17-8-401; N.C. Gen. Stat. § 1-605; Wash. Rev. Code Ann. § 74.66.005. In fact, Vermont's state FCA (which only became effective May 18, 2015 and thus does not yet appear to have been interpreted by any court) even includes a legislative command that state courts should be "guided by the construction of similar terms contained in the Federal False Claims Act" as amended by Congress and interpreted by federal courts. Vt. Stat. Ann. tit. 32 § 641.

The result of this statutory and judicial cross-pollination is that the Court's decision on the meaning of FCA "falsity" will define the term, not

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Univ. & Cmty. Coll. Sys. of Nev., 122 P.3d 1057, 1061 (Nev. 2006) (Nevada); *United States ex rel. Pervez v. Beth Israel Med. Ctr.*, 736 F. Supp. 2d 804, 816 (S.D.N.Y. 2010) (New York); *Bartz*, 856 F. Supp .2d at 258 n.7 (Oklahoma and Rhode Island); *United States ex rel. Nudelman v. Int'l Rehabilitation Assocs., Inc.*, No. 00-1837, 2006 WL 925035, at *12 (E.D. Pa. Apr. 4, 2006) (Tennessee); *United States v. Planned Parenthood*, 21 F. Supp. 3d 825, 830-31 (S.D. Tex. 2014) (Texas); *State v. Apotex*, 282 P.3d 66 (Utah 2012) (Utah); *Lewis v. City of Alexandria*, 287 Va. 474, 479 n.4 (2014) (Virginia); *United States ex rel. Bierman v. Orthofix Int'l, N.V.*, ___ F. Supp. 3d ___, No. 05-10557-RWZ, 2015 WL 4197551, at *1 & n.2 (D. Mass. July 1, 2015) (Chicago); *Ping Chen ex rel. United States v. EMSL Analytical, Inc.*, 966 F. Supp. 2d 282, 305 (S.D.N.Y. 2013) (New York City).

just for purposes of federal law, but for purposes of state and municipal law as well.

II. THE ILLINOIS STATE FCA SUIT AGAINST CATHOLIC CHARITIES ILLUSTRATES THE IMPACT OF APPLYING AN IMPLIED FALSE CERTIFICATION THEORY TO STATE FCAs.

The challenges of allowing an implied false certification theory in a state FCA case are illustrated by the facts of the Illinois FCA suit that Catholic Charities is currently facing. For a number of years, Catholic Charities provided foster care services in the Illinois counties of DuPage, Ford, Grundy, Iroquois, Kankakee, Kendall, and Will, outside of Chicago. As part of those services, it placed children with foster parents and then was reimbursed by the State of Illinois for its work. In 2006 Catholic Charities placed two female foster siblings with an individual. Compl. ¶37, *Illinois ex rel. Ballard v. Catholic Charities of the Diocese of Joliet*, 2012 L 753 (Ill. Cir. Ct. June 28, 2012) (DuPage Cnty.). It subsequently became concerned that the girls were being abused and reported its concerns to the Illinois Department of Children and Family Services. It eventually became concerned enough that it removed the girls from the foster parent's home. Compl. ¶¶63-64. The foster parent appealed through the state administrative process and eventually secured the return of one of the siblings, Compl. ¶96, while the other was transferred from Catholic Charities to another agency that provided foster services. Compl. ¶97.

That was where events stood until June 2012, when the foster parent filed suit against Catholic Charities and two other foster care service providers

under the Illinois FCA. Compl. ¶11. The complaint alleged that Catholic Charities' management of the two foster children's cases constituted false claims to the state, based on the generic agreement by Catholic Charities in its contracts with the Illinois Department of Children and Family Services to comply with "all local, state and federal laws, regulations, and standards." *Id.* From that generic language, the foster parent asserted that when Catholic Charities subsequently submitted requests for payment, it was implying that it remained in compliance with literally every statutory or regulatory requirement conceivably applicable to it. From that assumption, the foster parent alleged that Catholic Charities had violated a number of highly discretionary state laws and the federal Constitution in its handling of the two foster children's case. Under the foster parent's view of those laws, Catholic Charities was to blame and therefore was liable under an implied false certification theory for treble damages and statutory penalties for false claims.[8] Worse, because the foster parent asserted that Catholic Charities committed similar violations under all of its contracts, she asserted that *every* claim for foster care services from 2006 through 2011 violated the Illinois FCA. Compl. ¶¶149–54. Combined with claims submitted by Catholic Charities' two co-defendants, Relator alleged that $175 million in claims submitted over six years were

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[8] The foster parent also relied on the same allegations to separately assert that Catholic Charities fraudulently induced the Illinois Department of Children and Family Services to enter into various contracts. *See* Compl. ¶¶14, 148, 150, 151, and 154.

false (including $18 million to Catholic Charities). Compl. ¶149.

Yet the statutes and case the foster parent alleged Catholic Charities violated were highly subjective. First, the foster parent alleged violations of a number of sections of the Illinois Foster Parent Law. 20 Ill. Comp. Stat. Ann. § 520/1-15. But the provisions cited provide only aspirational standards that afford foster parents the rights "to be treated with dignity, respect, and consideration as a professional member of the child welfare team"; "to be given" certain information "in a timely and consistent manner"; "to be notified in a timely and complete manner of all court hearings"; "to be considered as a placement option"; and to "be free from acts of harassment and retaliation . . . when exercising the right to appeal." *Id.* Catholic Charities' compliance with those statutes is subjective and something about which reasonable minds can differ.

Second, the foster parent pointed to the Illinois Child Family Services Act. 20 Ill. Comp. Stat. Ann. § 505/7(c). That act requires foster services providers to "ensure that the child's health, safety, and best interests are met" and to "consider the individual needs of the child and the capacity of the prospective foster or adoptive parents to meet the needs of the child." *Id.* Again, whether Catholic Charities was in violation of this standard when it requested payments is at most a subjective judgment. In fact, the foster parent's own complaint referenced a state court judge's conclusion under § 505/7(c) that it was in the best interests of one of the foster children at

issue to be transferred from the foster parent's care. Compl. ¶136.

Third, the foster parent referenced the Illinois Juvenile Court Act ("JCA"), 705 Ill. Comp. Stat. Ann. 405/1-3(4.05), which enumerates ten factors (one with five subparts) to consider when making determinations regarding the best interests of children. It was not even clear from the complaint what duty the foster parent believed the JCA placed on Catholic Charities.

Lastly, the foster parent cited *Aristotle P. v. Johnson*, 721 F. Supp. 1002 (N.D. Ill. 1989). There, a court recognized that children have a First and Fourteenth Amendment right to a relationship with their siblings. *Id.* at 1005. But it did not hold that right was absolute; instead, it may be restricted if the state "ha[s] a sufficiently compelling interest." *Id.* at 1006. Likewise, siblings' interactions may be limited based on exercise of professional judgment that it is in the minors' best interests, which courts presume that professionals like Catholic Charities are exercising so long as their decisions are not "a substantial departure from accepted professional judgment, practice, or standards." *Id.* at 1010.

Even though these allegations had little or nothing to do with the services for which Catholic Charities requested payment from the state, they were sufficient to withstand a motion to dismiss on the foster parent's implied false certification theory.[9]

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[9] The motion to dismiss denial came prior to the Seventh Circuit's decision in *United States v. Sanford-Brown, Ltd.*, which correctly explained that implied false certification theory is "absurd," "unreasonable," and "lack[ing] a discerning

At present, the case remains in discovery, with the foster parent seeking to demonstrate that Catholic Charities submitted implicitly false claims under the Illinois FCA by violating the discretionary statutes discussed above. That theory of falsity should never have gotten off the ground. This Court should rule that an implied false certification theory is not proper under the federal FCA, which would for all practical purposes end the theory in state court as well.

CONCLUSION

For the reasons stated above and by Petitioner, the decision below should be reversed.

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limiting principle," as the facts of the suit against Catholic Charities demonstrate. 788 F.3d 696, 711-12 (7th Cir. 2015).

Respectfully submitted,

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